UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CHARLES OSZUST,	:	
	:	
Plaintiff,	:	Case No. 2:15-CV-2950
	:	
vs.	:	Judge
	:	
WESTROCK SERVICES, INC. f/k/a ROCK-TENN SERVICES, INC.,	:	Magistrate Judge
	:	
Defendant.	:	

DEFENDANT WESTROCK SERVICES, INC. F/K/A ROCK-TENN SERVICES, INC.'S ANSWER TO COMPLAINT

NOW COMES Defendant WestRock Services Inc. f/k/a Rock-Tenn Services, Inc. ("WestRock Services") and for its Answer to Plaintiff's Complaint admits, denies, and avers as follows:

(THE PARTIES)

To the extent the unnumbered paragraphs prior to Paragraph 1 of the Complaint contain allegations requiring an answer, WestRock Services denies such allegations.

1. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint and therefore denies same.

2. WestRock Services admits its principal place of business is located at 504 Thrasher St., Norcross, Georgia 30071; and it is incorporated in the State of Georgia. WestRock Services otherwise denies the remaining allegations in Paragraph 2 of the Complaint.

3. WestRock Services admits that at relevant times to this matter, WestRock Services was known as "Rock-Tenn Services, Inc." WestRock Services otherwise denies the allegations in Paragraph 3 of the Complaint.

4. WestRock Services admits the Ohio Secretary of State filing shows it changed its name to "WestRock Services, Inc." effective October 13, 2015.

(JURISDICTION AND VENUE)

5. WestRock Services admits that jurisdiction is proper in the United States District Court for the Southern District of Ohio. Further answering, WestRock Services denies Plaintiff is entitled to any damages as alleged in the Complaint.

6. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Complaint and therefore denies same.

7. Paragraph 7 of the Complaint sets forth a legal conclusion to which no response is required.

8. WestRock Services denies Plaintiff is entitled to any damages as alleged in the Complaint.

9. WestRock Services admits jurisdiction and venue are proper in the United States District Court for the Southern District of Ohio.

(FACTS)

10. WestRock Services admits that Plaintiff previously asserted on-the-job injuries but is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 10 of the Complaint and therefore denies same.

11. WestRock Services denies the allegations set forth in Paragraph 11 of the Complaint.

12. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint and therefore denies same.

13. WestRock Services admits management informed Plaintiff he would be moved up to the Pulp Mill Operator job on or around November 14, 2013, but is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13 of the Complaint and therefore denies same.

14. WestRock Services admits Plaintiff verbally expressed certain concerns to the company nurse on or around November 14, 2013. WestRock Services denies it was informed Plaintiff was medically constrained from working as a Pulp Mill Operator at that time. Further answering, WestRock Services is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14 of the Complaint and therefore denies same.

15. WestRock Services denies the allegations set forth in Paragraph 15 of the Complaint.

16. WestRock Services admits Plaintiff verbally expressed certain concerns to management regarding being moved up to the Pulp Mill Operator position. Further Answering, WestRock Services denies the remaining allegations set forth in Paragraph 16 of the Complaint.

17. WestRock Services admits Plaintiff verbally expressed certain concerns to management on or around November 14, 2013. Further answering, WestRock Services denies the remaining allegations set forth in Paragraph 17 of the Complaint.

18. WestRock Services denies the allegations set forth in Paragraph 18 of the Complaint.

19. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint and therefore denies same.

20. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint and therefore denies same.

21. WestRock Services admits that Plaintiff reported to work on November 19, 2013 but is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21 of the Complaint and therefore denies same.

22. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint and therefore denies same.

23. WestRock Services admits that on November 19, 2013, Plaintiff fell down at work and was transported by ambulance. Further answering, WestRock Services is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 23 of the Complaint and therefore denies same.

24. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Complaint and therefore denies same.

25. WestRock Services denies the allegations set forth in Paragraph 25 of the Complaint.

26. WestRock Services admits Plaintiff was not released to return to work based upon the results of an independent medical examination. Further answering, WestRock Services is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 26 of the Complaint and therefore denies same.

27. WestRock Services admits that at some point it was contacted by an attorney representing Plaintiff but is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 27 of the Complaint and therefore denies same.

28. WestRock Services admits that at some point Plaintiff was approved to return to work but denies the remaining allegations set forth in Paragraph 28 of the Complaint.

29. WestRock Services admits Plaintiff signed a "Last Chance Agreement" on June 24, 2014. Further answering, WestRock Services denies the remaining allegations set forth in Paragraph 29 of the Complaint and avers that Plaintiff signed said Agreement voluntarily.

30. WestRock Services admits that Plaintiff retired on or about September 28, 2014 but denies the remaining allegations set forth in Paragraph 30 of the Complaint.

(COUNT I)
(Deliberate Intent to Injure)

31. WestRock Services reasserts and restates its responses to Paragraphs 1 through 30 of the Complaint as if set forth fully herein.

32. WestRock Services denies the allegations set forth in Paragraph 32 of the Complaint.

33. WestRock Services admits Plaintiff verbally expressed certain concerns to WestRock Services medical and management staff on and in the week before November 18, 2013. WestRock Services denies it was informed Plaintiff was medically constrained from

working as a Pulp Mill Operator at that time. Further answering, WestRock Services denies all remaining allegations in Paragraph 33 of the Complaint.

34. WestRock Services denies the allegations set forth in Paragraph 34 of the Complaint.

35. WestRock Services denies the allegations set forth in Paragraph 35 of the Complaint.

36. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 36 of the Complaint and therefore denies same.

37. WestRock Services denies the allegations set forth in Paragraph 37 of the Complaint.

(COUNT II)
(Constructive Discharge)

38. WestRock Services reasserts and restates its responses to Paragraphs 1 through 37 of the Complaint as if set forth fully herein.

39. WestRock Services denies the allegations set forth in Paragraph 39 of the Complaint.

40. WestRock Services denies the allegations set forth in Paragraph 40 of the Complaint.

41. WestRock Services denies the allegations set forth in Paragraph 41 of the Complaint.

42. WestRock Services denies the allegations set forth in Paragraph 42 of the Complaint.

43. WestRock Services denies the allegations set forth in Paragraph 43 of the Complaint.

44. WestRock Services denies the allegations set forth in Paragraph 44 of the Complaint.

45. WestRock Services denies the allegations set forth in Paragraph 45 of the Complaint.

46. WestRock Services denies the allegations set forth in Paragraph 46 of the Complaint.

47. WestRock Services denies the allegations set forth in Paragraph 47 of the Complaint.

(COUNT III)
(Disability Discrimination)

48. WestRock Services reasserts and restates its responses to Paragraphs 1 through 47 of the Complaint as if set forth fully herein.

49. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 49 of the Complaint and therefore denies same.

50. WestRock Services denies the allegations set forth in Paragraph 50 of the Complaint.

51. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint and therefore denies same.

52. WestRock Services denies the allegations set forth in Paragraph 52 of the Complaint.

53. WestRock Services denies the allegations set forth in Paragraph 53 of the Complaint.

54. WestRock Services denies the allegations set forth in Paragraph 54 of the Complaint.

55. WestRock Services denies the allegations set forth in Paragraph 55 of the Complaint.

56. WestRock Services denies the allegations set forth in Paragraph 56 of the Complaint.

57. WestRock Services denies the allegations set forth in Paragraph 57 of the Complaint.

58. WestRock Services denies the allegations set forth in Paragraph 58 of the Complaint.

59. WestRock Services denies the allegations set forth in Paragraph 59 of the Complaint.

60. WestRock Services denies the allegations set forth in Paragraph 60 of the Complaint.

(COUNT IV)
(Retaliatory Discharge)

61. WestRock Services reasserts and restates its responses to Paragraphs 1 through 60 of the Complaint as if set forth fully herein.

62. WestRock Services denies the allegations set forth in Paragraph 62 of the Complaint.

63. WestRock Services denies the allegations set forth in Paragraph 63 of the Complaint.

64. WestRock Services denies the allegations set forth in Paragraph 64 of the Complaint.

65. WestRock Services denies the allegations set forth in Paragraph 65 of the Complaint.

66. WestRock Services denies the allegations set forth in Paragraph 66 of the Complaint.

67. WestRock Services denies the allegations set forth in Paragraph 67 of the Complaint.

68. WestRock Services denies the allegations set forth in Paragraph 68 of the Complaint.

69. WestRock Services denies the allegations set forth in Paragraph 69 of the Complaint.

(COUNT V)
(Intentional Infliction of Emotional Distress)

70. WestRock Services reasserts and restates its responses to Paragraphs 1 through 69 of the Complaint as if set forth fully herein.

71. WestRock Services admits Plaintiff was moved up to the Pulp Mill Operator position. Further answering, WestRock Services denies all remaining allegations set forth in Paragraph 71 of the Complaint.

72. WestRock Services admits Plaintiff verbally expressed certain concerns to WestRock Services medical and management staff on and in the week before November 18, 2013. WestRock Services denies it was informed Plaintiff was medically constrained from working as a Pulp Mill Operator at that time. Further answering, WestRock Services denies the remaining allegations set forth in Paragraph 72 of the Complaint.

73. WestRock Services denies the allegations set forth in Paragraph 73 of the Complaint.

74. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 74 of the Complaint and therefore denies same.

75. WestRock Services is without information sufficient to form a belief as to the truth of the allegations in Paragraph 75 of the Complaint and therefore denies same.

76. WestRock Services admits that on November 19, 2013, Plaintiff fell down at work and was transported by ambulance but is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 76 of the Complaint and therefore denies same.

77. WestRock Services denies the allegations set forth in Paragraph 77 of the Complaint.

78. WestRock Services denies the allegations set forth in Paragraph 78 of the Complaint.

79. WestRock Services denies the allegations set forth in Paragraph 79 of the Complaint.

80. WestRock Services denies the allegations set forth in Paragraph 80 of the Complaint.

81. WestRock Services denies the allegations set forth in Paragraph 81 of the Complaint.

82. WestRock Services denies the allegations set forth in Paragraph 82 of the Complaint.

83. WestRock Services denies the allegations set forth in Paragraph 83 of the Complaint.

84. WestRock Services denies any allegation not specifically admitted herein as true.

85. WestRock Services denies that Plaintiff is entitled to any of the relief prayed for.

AFFIRMATIVE AND OTHER DEFENSES

86. WestRock Services conducted its business in accordance with all applicable laws related to Plaintiff's employment.

87. Plaintiff's Complaint in whole or in part fails to state a claim upon which relief may be granted.

88. WestRock Services took all actions with respect to Plaintiff's employment based upon legitimate, non-discriminatory business reasons.

89. Subject to a reasonable opportunity for investigation and discovery, some or all of Plaintiff's claims are subject to a binding arbitration agreement.

90. Subject to a reasonable opportunity for investigation and discovery, some or all of Plaintiff's claims and/or allegations are barred by the applicable statute(s) of limitations.

91. At all times, WestRock Services acted reasonably and in good faith.

92. Subject to a reasonable opportunity for investigation and discovery, some of Plaintiff's claims and/or allegations are precluded by his failure to exhaust his remedies under the collective bargaining agreement.

93. Subject to a reasonable opportunity for investigation and discovery, some of Plaintiff's claims and/or allegations are precluded by his failure to exhaust his administrative remedies.

94. Subject to a reasonable opportunity for investigation and discovery, some of Plaintiff's claims may be barred by the exclusivity and/or immunity provisions of the Ohio Workers' Compensation Act.

95. Subject to discovery, to the extent that Plaintiff incurred any damages, such damages were the proximate result of Plaintiff's own contributory fault.

96. Subject to discovery, to the extent that Plaintiff incurred any damages as a result of any acts or omissions of WestRock Services or its agents or employees, which WestRock Services denies, Plaintiff failed to mitigate his damages.

97. Subject to discovery, Plaintiff's damages were caused by persons other than WestRock Services.

98. Plaintiff's request for compensatory and/or punitive damages is bound or limited by the U.S. Constitution, the Ohio Constitution, and applicable Ohio statutes.

RESERVATION OF RIGHTS

99. WestRock Services respectfully requests reservation of the right to plead additional defenses, and other matters of defense, to Plaintiff's Complaint by way of amendment after further discovery.

WHEREFORE, having fully answered, WestRock Services prays that:

1. Judgment be rendered in its favor and against Plaintiff;

2. This Court dismiss the Complaint with prejudice;

3. WestRock Services be awarded its costs and disbursements, including reasonable attorneys' fees; and

4. This Court grant to WestRock Services such other relief as justice requires.

Respectfully Submitted,

/s/ Paul N. Garinger
William A. Nolan (0041891), Triad Attorney
Paul N. Garinger (0079897)
BARNES & THORNBURG LLP
41 South High Street, Suite 3300
Columbus, Ohio 43215
(614) 628-0096
(614) 628-1433 Facsimile
Bill.Nolan@btlaw.com
Paul.Garinger@btlaw.com

Counsel for Defendant WestRock Services Inc. f/k/a Rock-Tenn Services, Inc.

CERTIFICATE OF SERVICE

On this 25th day of January, 2016, a copy of the foregoing Defendant WestRock Services Inc. f/k/a Rock-Tenn Services, Inc.'s Answer to Complaint was electronically filed with the Clerk of Court using the CM/ECF system and that same will be served to the following counsel of record through the CM/ECF system.

Mark A. Kepple
Bailey & Wyant, P.L.L.C.
1219 Chapline Street
Wheeling, WV 26003

Attorneys for Plaintiff
Charles Oszust

/s/ Paul N. Garinger
Paul N. Garinger